Petro-Pipe Industries (M) Sdn Bhd v Fieldwork Engineering Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANY WINDING UP PETITION NO D6-28-409 OF 2002
MOHD HISHAMUDIN J
17 JANUARY 2003

Companies and Corporations — *Winding up — Advertisement of petition — Number of times the petitioner was required to advertise the petition in the local newspapers — Whether advertisement must have appeared in the respective newspaper on a specific date — Whether High Court had power to set aside a registrar's certificate — Companies (Winding-up) Rules 1972 r 24*

The winding up petition ('the petition') was advertised once in the *New Straits Times* (on 18 July 2002) and once in *The Star* (also on 18 July). The registrar's certificate was issued pursuant to r 32 of the Companies (Winding-up) Rules 1972 ('the Winding-up Rules'). Rule 24 of the Winding-up Rules states that 'Every petition shall be advertised in Form 4 seven clear days or such longer time as the court may direct before the hearing, as follows; (a) once in the Gazette and twice at least in two local newspapers circulating in Malaysia or in such other newspapers as the court may direct'. The present case is about the interpretation of the phrase '... twice at least in two local newspapers ...' in the above rule. The question for determination in this case was this, 'under r 24 of the Winding-up Rules, how many times, at least, is the petitioner required to advertise the petition in the local newspapers?' The petitioner also contended that the advertisements must appear in the respective newspapers on a specific date, that is, a date that is exactly seven clear days before the hearing of the petition.

Held adjourning the petition to be heard on 17 March 2003 and allowing the petitioner to re-advertise the petition in the Gazette and the local newspapers:

(1) The petition must be advertised two times, on different dates, in each of the newspapers chosen. 'Different dates' means that the advertisement should not appear twice in the same newspaper on the same day. It is a basic principle of interpretation that words used in a statute must be given their plain, ordinary or literal meaning. The plain, ordinary or literal meaning of the word 'twice' is 'two times'. It cannot be interpreted to mean 'once'. Even if the court was to take the purposive approach, since the purpose of the advertisements is to give notice to creditors of the petition, then, the more the advertisements in the newspapers, the better. Thus an interpretation that requires a minimum of four advertisements in the newspapers, instead of a mere two, is in harmony with the policy behind the rule (see p 422D-E); *Teck*

Yow Brothers Hand-Bag Trading Company v Maharani Supermarket Sdn Bhd [1989] 1 MLJ 101 not followed.

(2) Rule 24 of the Winding-up Rules cannot be interpreted to stipulate that the advertisements must appear in the newspapers exactly seven clear days. The court cannot give an interpretation that will result in absurdity. The petition must be advertised (be it in the Gazette or in the newspapers) at least seven clear days before the hearing day (and since the petitioner has to advertise twice in each of the local newspapers chosen, it is the second advertisement that has to appear at least seven clear days before the date of the hearing). That would be a reasonable interpretation, an interpretation that is in accord with the purpose of the advertisements (see p 424G–I).

(3) It was within the powers of the court to set aside the certificate if the registrar had erroneously issued it. The question of estoppel did not arise at all. Regardless of the fact that a certificate had been issued by the registrar, where the petitioner had failed to satisfy the registrar that there had been due compliance with r 24 of the Winding-up Rules (and with the other requirements as prescribed by the Winding-up Rules), the court had no power to proceed with the petition (see p 427H–I).

(4) While it was not disputed that the petitioner in the present case had 'attended before the registrar', and a certificate of due compliance had been issued by the registrar, yet, clearly, the petitioner could not be said to have 'satisfied him in the manner required by this rule'. Whether or not the petitioner has so satisfied the registrar, such an issue must be looked at objectively and not subjectively (see p 428B).

[Bahasa Malaysia summary

Petisyen penggulungan ('petisyen tersebut') diiklankan sekali dalam akhbar *New Straits Times* (pada 18 Julai 2002) dan sekali dalam akhbar *The Star* (juga pada 18 Julai). Perakuan pendaftar dikeluarkan menurut k 32 Kaedah-Kaedah (Penggulungan) Syarikat 1972 ('Kaedah-Kaedah Penggulungan'). Kaedah 24 Kaedah-Kaedah Penggulungan menyatakan bahawa 'Every petition shall be advertised in Form 4 seven clear days or such longer time as the court may direct before the hearing, as follows; (a) once in the Gazette and twice at least in two local newspapers circulating in Malaysia or in such other newspapers as the court may direct'. Kes ini adalah berkaitan tafsiran ungkapan '... twice at least in two local newspapers ...' dalam kaedah di atas. Soalan untuk ditentukan dalam kes ini adalah, 'under r 24 of the Winding-up Rules, how many times at least is the petitioner required to advertise the petition in the local newspapers?' Pempetisyen juga berhujah bahawa iklan-iklan tersebut mesti dipaparkan dalam akhbar masing-masing pada tarikh khusus, iaitu, satu tarikh yang tepat tujuh hari sebelum pembicaraan petisyen.

Diputuskan, menangguhkan petisyen untuk didengar pada 17 Mac 2003 dan membenarkan pempetisyen mengiklankan semula petisyen tersebut di dalam Gazette dan akhbar-akhbar:

(1) Petisyen mesti diiklankan dua kali, pada tarikh berlainan, dalam setiap satu akhbar yang dipilih. Tarikh berlainan bermaksud bahawa iklan tidak harus dipaparkan dua kali dalam akhbar yang sama pada hari yang sama. Adalah merupakan prinsip asas tafsiran bahawa perkataan yang digunakan dalam statut mesti diberikan maksud biasa, harfiah mereka. Maksud biasa, harfiah perkataan 'twice' adalah 'two times'. Ia tidak boleh ditafsirkan sebagai 'once'. Andainya mahkamah mengambil pendekatan 'purposive', oleh kerana tujuan iklan tersebut adalah untuk memberi notis kepada pemiutang, maka lebih kerap iklan disiarkan dalam akhbar, lebih baik. Justeru itu, satu tafsiran yang menghendaki iklan minima sebanyak empat kali dalam akhbar, dan bukannya dua, adalah selaras dengan polisi di sebalik kaedah tersebut (lihat ms 422D–E); *Teck Yow Brothers Hand-Bag Trading Company v Maharani Supermarket Sdn Bhd* [1989] 1 MLJ 101 tidak diikut.

(2) Kaedah 24 Kaedah-Kaedah Penggulungan tidak boleh ditafsirkan sebagai menetapkan bahawa iklan-iklan tersebut mesti muncul dalam akhbar tepat tujuh hari. Mahkamah tidak boleh memberi tafsiran yang tidak munasabah. Petisyen tersebut mesti diiklankan (sama ada dalam Gazette atau dalam akhbar) sekurang-kurangnya tujuh hari sebelum tarikh pembicaraan (dan oleh kerana pempetisyen harus mengiklan dua kali dalam setiap satu akhbar yang dipilih, ia merupakan iklan kedua yang harus disiarkan sekurang-kurangnya tujuh hari sebelum tarikh pembicaraan). Ini merupakan tafsiran yang munasabah, satu tafsiran yang selaras dengan tujuan iklan-iklan tersebut (lihat ms 424G–I).

(3) Adalah dalam lingkungan kuasa mahkamah untuk mengenepikan perakuan tersebut sekiranya pendaftar telah dengan salah memberikannya. Soalan estoppel tidak timbul sama sekali. Tanpa mengambil kira hakikat bahawa perakuan sedemikian telah dikeluarkan oleh pendaftar, di mana pempetisyen telah gagal memuaskan pendaftar bahawa pempetisyen telah mematuhi k 24 Kaedah-Kaedah Penggulungan (dan keperluan lain seperti yang dinyatakan dalam Kaedah-Kaedah Penggulungan), mahkamah tidak mempunyai kuasa untuk meneruskan petisyen (lihat ms 427H–I).

(4) Walaupun ia tidak dipertikaikan bahawa pempetisyen dalam kes ini telah 'attended before the registrar', dan satu perakuan kepatuhan telah dikeluarkan oleh pendaftar, namun, secara jelas, pempetisyen tidak boleh dikatakan telah 'satisfied him in the manner required by this rule'. Sama ada pempetisyen telah memuaskan pendaftar sedemikian, isu seperti ini mestilah diteliti secara objektif dan bukan subjektif (lihat ms 428B).]

Notes

For cases on advertisements of petitions, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue), paras 760–761.

Cases referred to

Azman & Tay Associates Sdn Bhd v Sentul Raya Sdn Bhd [2002] 4 MLJ 390 (refd)

Bank Utama (M) Bhd v GKM Amal Bhd [2000] 5 MLJ 657 (cited)

Crocuses & Daffodils (M) Sdn Bhd v Development and Commercial Bank Bhd [1997] 2 MLJ 756. (refd)

NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd [1987] 1 MLJ 39 (refd)

Shusella Ltd, Re (1983) BCLC 505 (refd)

Signland Ltd, Re [1982] 2 All ER 609 (refd)

Teck Yow Brothers Hand-Bag Trading Company v Maharani Supermarket Sdn Bhd [1989] 1 MLJ 101 (not folld)

Legislation referred to

Companies (Winding-up) Rules 1972 rr 24, (a), 30, 32, (1)(a), (2)
Interpretation Acts 1948 and 1967 s 18(1)(e)

Alex Chang (*HL Lim* and *LC Tan* with him) (*Alex Chang & Co*) for the petitioner.

Chia Wen Chow (*Chia Wen Chow & Associates*) for the respondent.

Syamsul Amri Nordin (*Zahara Naim* and *Faizah*) for the Official Receiver.

Mohd Hishamudin J: At the commencement of the hearing of this winding up petition, Mr Alex Chang, the learned counsel for the petitioner, objected to the affidavits in opposition filed by the respondent on the ground that the affidavits were filed in breach of the seven day rule and thus is out of time, citing r 30 of the Companies (Winding-up) Rules 1972 ('the Winding-up Rules') and *Crocuses & Daffodils (M) Sdn Bhd v Development and Commercial Bank Bhd* [1997] 2 MLJ 756. I have given due consideration to the submissions of parties and as the affidavits were indeed filed out of time and that compliance with the rule is mandatory, on the authority of *Crocuses & Daffodils*, I uphold the objection. Accordingly, the respondent's affidavits in opposition are disallowed.

The present case involves an interesting point of law. But it does not concern affidavits in opposition, nor r 30. It concerns the interpretation of r 24 of the Winding-up Rules. The question for determination in this case is this, under r 24, how many times, at least, is the petitioner required to advertise the petition in the local newspapers. (The issue in the present case is not concerned with advertising the petition in the Gazette.)

First, I shall state a few basic facts. In the present case, the petition was advertised once in the *New Straits Times* (on 18 July 2002) and once in *The Star* (also on 18 July). The registrar's certificate pursuant to r 32 of the Winding-up Rules was issued on 31 July 2002.

A Rule 24 stipulates:

> Every petition shall be advertised in Form 4 seven clear days or such longer time as the Court may direct before the hearing, as follows:
>
> (a) once in the *Gazette* and twice at least in two local newspapers circulating in Malaysia or in such other newspapers as the Court may direct.

B To be precise, the present case is about the interpretation of the phrase:

> ... twice at least in two local newspapers ...

in the above rule.

C The learned counsel for the respondent, Mr Chia Wen Chow, submits that what the phrase means is this: the petitioner is required to advertise the petition in at least two local newspapers (say, the *New Straits Times* and *The Star*), and in each of the newspapers chosen, the advertisement of the petition must appear twice, but at different dates. In other words, assuming that the *New Straits Times* and *The Star* are chosen by the petitioner as the two local newspapers, the petition advertisement must appear twice (but at D two different dates) in the *New Straits Times* and also twice (also at two different dates) in *The Star*. Learned counsel argues that, all in all, there must be at least four advertisements in the local newspapers.

Mr Chia urges the court to dismiss the petition by reason of non-compliance with r 24. Learned counsel submits that there has been non-E compliance because in the present case the advertisement appeared only once in each of the two newspapers, whereas it should appear twice. It appeared once in the *New Straits Times* (on 18 July 2002) and once in *The Star* (also on 18 July). In other words, the petition was advertised only twice in the newspapers instead of a minimum of four times as required by r 24.

F It is common ground that compliance with r 24 is mandatory (see the Supreme Court case of *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39 and *Azman & Tay Associates Sdn Bhd v Sentul Raya Sdn Bhd* [2002] 4 MLJ 390). I am in agreement with Mr Chia that the court has the power to dismiss the petition by reason of non-compliance with r 24 (see *Re Shusella Ltd* [1983] BCLC 505 and *Re Signland Ltd* [1982] 2 All ER G 609).

However, Mr Alex Chang, the learned counsel for the petitioner, on the other hand, has a different interpretation for that phrase. He submits that what the phrase means is that it is sufficient for the petition to be advertised only once in a local newspaper so long as it is advertised in at least two local H newspapers. In other words, assuming the *News Straits Times* and *The Star* are chosen as the two local newspapers, it is sufficient for the advertisement to appear only once in the *New Straits Times* and, likewise, only once in *The Star*. That is to say, a mere total of two advertisements in the local newspapers suffice. For his view, learned counsel relies on *Teck Yow Brothers Hand-Bag Trading Company v Maharani Supermarket Sdn Bhd* I [1989] 1 MLJ 101.

Mr Alex Chang contends that that should be the correct interpretation of the rule for (in his view) it is not possible to advertise the petition in the

newspapers twice on different dates because the advertisement in each of the local newspaper chosen, legally, could appear only on a single date. In learned counsel's opinion, what the words:

> ... seven clear days or such longer time as the court may direct before the hearing ...

mean is that the advertisements must appear in the respective newspapers on a specific date, that is, a date which is exactly seven clear days before the hearing of the petition. Meaning, not a day earlier, nor a day later, but exactly seven clear days. And it is counsel's contention that if the petitioner intends to advertise the petition earlier than seven clear days, he must first apply to the court for direction before he could do so. *Bank Utama (M) Bhd v GKM Amal Bhd* [2000] 5 MLJ 657 was cited.

In my judgment and with respect, I accept the interpretation of r 24 as submitted by Mr Chia, the learned counsel for the respondent. I agree that it is clear from the phrase:

> ... twice at least in two local newspapers ...

that the petition must be advertised two times, but on different dates, in each of the newspapers chosen. What I mean by 'different dates' is that the advertisement should not appear twice in the same newspaper on the same day. It is a basic principle of interpretation that words used in a statute must be given their plain, ordinary or literal meaning. The plain, ordinary or literal meaning of the word 'twice' is 'two times'. It cannot be interpreted to mean 'once'. Even if I were to take the purposive approach, since the purpose of the advertisements is to give notice to creditors of the petition, then, the more the advertisements in the newspapers, the better. Thus, an interpretation that requires a minimum of four advertisements in the newspapers, instead of a mere two, is in harmony with the policy behind the rule. Further, as a matter of legislative drafting, it is pertinent to observe that the drafters of the Winding-up Rules have used the word 'once' in r 24 in the context of the requirement as to the advertising in the Gazette. The rule states:

> ... *once* in the Gazette .... (Emphasis added.)

Now, for the sake of argument, assuming that it was the intention of the drafters that the advertising of the petition in each of the newspapers should be done only once, instead of twice, then the drafters would, likewise, have used the word 'once' as well instead of 'twice' in respect of the requirement as to the advertising in the newspapers so that the phrase in r 24 will read:

> ... *once* in the Gazette and *once* at least in two local newspapers ... (Emphasis added.)

instead of (as presently worded):

> ... *once* in the Gazette and *twice* at least in two local newspapers .... (Emphasis added.)

That would have been the proper and better way to draft the rule. Legal draftsmen in composing legislation are very particular and meticulous on

their choice of words. Maintaining consistency in the choice of words is one of the cardinal rules of legislative drafting. But then the drafters of r 24 have instead deliberately used the word 'twice'. Such a deliberate choice of words clearly shows that it was not the intention of the drafters that the petition should be advertised only once in each of the local newspapers.

With respect, and notwithstanding *Bank Utama*, I am unable to accept Mr Alex Chang's argument that the petition must be advertised on a specific day which has to be exactly seven clear days before the date of the hearing of the petition. Bearing in mind that the purpose of the advertisements is to notify creditors of the hearing of the petition, I am unable to discover any rationale in requiring the advertisements to appear in the newspapers exactly seven clear days before the day of the hearing of the petition. Indeed, such a requirement is unreasonable and is contrary to the purpose of the advertisement and the objective of the rule. For surely a period that is slightly longer than seven clear days would be more advantageous to creditors. Such a strict requirement also imposes hardship on the petitioner; and in a certain aspect this requirement is impossible to comply with (this shall be explained shortly). Even in *Bank Utama* the learned judge, although seems to be of the view that the advertisements of the petition must appear in the newspapers on a specific day exactly seven days before the hearing date, nonetheless, lamented (at p 659):

> Rule 24 of the Companies (Winding-up) Rules 1972 requires every petition to be advertised, in the manner laid down, 'seven clear days or such longer time as the court may direct before the hearing'. It would appear that the advertising must be done exactly seven clear days before the hearing and cannot be done earlier unless the court so directs. I find the rule most unusual. Its purpose is to give to creditors notice of the petition. Statute does not usually, in requiring something to be done, provide for it to be done exactly on a specific day.

Further, with respect, the argument that the petition must be advertised exactly seven clear days before the hearing date does not make sense when one applies the argument to the requirement as to advertising in the Gazette. It is important to appreciate that under r 24, the 'seven clear days' requirement applies to both types of advertisement: advertisement in the Gazette as well as advertisement in the newspapers. Now, whilst it is quite possible for a petitioner, by making the necessary arrangement with the management of the local newspapers concerned, to ensure that the petition is published in the newspapers on a specific date that is exactly seven clear days before the hearing date, it is, however, not so possible with respect to the advertising of the petition in the Gazette. This is because the timing of the publication of the petition in the Gazette is not determined by the authority (known as Percetakan Nasional Malaysia Bhd) charged with the responsibility for the publication of the Gazette but is determined by law, namely, s 18(1)(e) of the Interpretation Acts 1948 and 1967 ('the Interpretation Acts'). This provision stipulates:

> *Gazette*
>
> 18 (1) The *Gazette* shall be published in parts as follows:

(a) ...

...

(e) a part which shall be published fortnightly every alternate Thursday commencing with the first Thursday in each year which shall contain all matter which is required to be published in the *Gazette* or which the Government deems it necessary to publish for general information other than matter which this subsection requires to be published in the other parts. The Attorney General may authorise the publication of a special issue on any day other than an alternate Thursday. The fortnightly issue shall in addition contain particulars of any special issues of this part and all the other parts which have been published since the publication of the previous fortnightly issue.

What the above provision means is that once the petition is sent by the petitioner to the printer, Percetakan Nasional Bhd ('PNB'), for publication in the Gazette, it cannot be published immediately or on any date specified by the petitioner. It can only be published on the day as specified by the provision of s 18(1)(e) as the publication day, which is every alternate Thursday, meaning that the publication day is neither daily nor weekly but on a Thursday, and even that once every two weeks. Thus, the petition advertisement will only appear in the Gazette at the soonest next alternate Thursday, and even that it is on the condition that the petition is sent to PNB well in time. The Interpretation Acts is a law enacted by Parliament, whereas the Winding-up Rules is merely a subsidiary legislation that came into existence only in 1972, that is to say, later than the Interpretation Acts. I venture to state that as a principle of legal interpretation, the drafters of the Winding-up Rules, in drafting r 24, must be presumed to be well aware of the provision of s 18(1)(e) of the Interpretation Acts and all the implications that go with the stipulations of that provision, including the fact that that section makes it not possible to publish the petition in the Gazette on a day that is exactly seven clear days before the hearing day. In the light of this legal impossibility, therefore, it could not have been the intention of the drafters of the rule that the petition should be advertised in the Gazette and newspapers on a date that is exactly seven clear days before the hearing date.

In my judgment and based on the above reasoning, the words:

... seven clear days ...

in r 24, could not be interpreted to stipulate that the advertisements must appear in the newspapers exactly seven clear days. This court cannot give such words an interpretation that will result in absurdity. In my view, what the words mean is that the petition must be advertised (be it in the Gazette or in the newspapers) at least seven clear days before the hearing day (and since the petitioner has to advertise twice in each of the local newspapers chosen, it is the second advertisement that has to appear at least seven clear days before the date of the hearing). That would be a reasonable interpretation, an interpretation that is in accord with the purpose of the advertisements. Indeed, in *Bank Utama*, Abdul Aziz J (as he then was) said (at p 659):

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> ... a longer [than the seven clear days] notice would be better for creditors and would not prejudice anybody. I am puzzled as to the reason why r 24 is drafted in the way that it is.

But it might be argued that such an interpretation renders the words:

> ... or such longer time as the court may direct ...

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superfluous or meaningless. I do not think so. In my opinion, whilst r 24, as correctly interpreted, does not require that the advertisement must appear (either in the Gazette or in the newspapers) exactly seven clear days before the hearing date, yet at the same time too early an appearance of the advertisement is not encouraged. For, if the petition is advertised too early

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before the hearing date, it may not be that effective as a means of notifying creditors. Therefore, in my opinion, what the words:

> ... or such longer time as the court may direct ...

mean is that if the petitioner, for certain good reasons, intends to advertise the petition too early in time, say, some two months ahead before the date

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of the hearing of the petition, he must apply for direction from the court. But in my judgment, no application for direction from the court is necessary where the publications of the advertisement do not take place too early. For example, where the publication of the advertisement of the petition takes place, say, around 14 days or even around 21 days before the hearing date.

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I must now revert to *Teck Yow Brothers* as much reliance has been placed on this case by learned counsel for the petitioner. In this case cited, the petitioner applied to wind up the respondent company. The learned counsel for the respondent company, in opposing the petition, argued that the winding up order should not be granted as the petitioner had failed to comply with r 24(a) of the Winding-up Rules. The complaint of learned

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counsel in that case is set out in the judgment of the learned judge as follows (at p 103):

> Mr Kumar's other ground is that the winding-up order should not be granted as the petitioner had failed to comply with r 24(a) of the Winding-Up Rules requiring publication twice at least in two local newspapers.

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With respect, it is not clear from the judgment what was the exact issue before the court. The issue was not only stated in general terms, but was also, as I shall soon show, set out in an inconsistent manner. Was it the contention of learned counsel in the above case that there had been no advertisement of the petition at all in the local newspapers? Or, was the issue

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raised by counsel merely concerned with the number of times the advertisement of the petition was published in the local newspapers? Or, was the issue that was raised by learned counsel concerned with the timing of the publication of the advertisement? I do not think that it is appropriate that we should speculate on what the actual issue before the court was. However, whatever might have been the issue, one thing is clear: it does not

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appear from the judgment that the learned judge embarked on an analysis of the words:

> ... twice at least in two local newspapers ...

As the exact issue is not clear, it is difficult or even impossible to discover the ratio decidendi of the case. Be that as it may, the learned judge held (at p 103):

> As regards the allegation that the petitioner failed to comply with r 24 of the Winding-Up Rules as to publication in the gazette and two local newspapers, I find that the petitioner has published in the gazette and once in two local newspapers and this was sufficient publication applying the case of *Re NKM Holdings Sdn Bhd* [1985] 2 MLJ 390.

With respect, apart from what has been just said, I have several other observations or comments on the above judgment. First, one is faced with the problem of inconsistency in the judgment when one attempts to ascertain the actual issue (or issues) before the court. It appears to me that, as a matter of stating the issue, the later part of the judgment just quoted appears to be inconsistent with the earlier part of the judgment quoted. In the earlier part of the judgment quoted, the issue as stated was confined to the publication of the petition in two local newspapers. There is no mention of the Gazette at all. The learned judge said (to repeat):

> Mr Kumar's other ground is that the winding-up order should not be granted as the petitioner had failed to comply with r 24(a) of the Winding-Up Rules *requiring publication twice at least in two local newspapers.* (Emphasis added.)

Thus, the impression given by the earlier part of the judgment is that the issue before the court merely concerned the publication of the advertisement in the two local newspapers. However, the later part of the judgment quoted now mentions the publication of the petition in the Gazette as well as in the two local newspapers. The learned judge said (to repeat):

> As regards the allegation that the petitioner failed to comply with r 24 of the Winding-Up Rules *as to publication in the gazette and two local newspapers,* ... . (Emphasis added.)

This part of the judgment thus gives the impression that the issues before the court were wider than earlier stated. According to this part of the judgment, the issues were concerned not only with the publication of the advertisement in the local newspapers but also with the publication of the advertisement in the Gazette. Therefore, it is not clear what the actual issue before the court was. Since it is not clear as to what the exact issue before the court was, the judgment of the learned judge cannot be taken to be a precedent for the interpretation of the phrase:

> ... twice at least in two local newspapers ....

Hence, the case cannot be regarded as an authority for any proposition to the effect that it is sufficient for the purpose of the requirement in r 24 as to advertising in the local newspapers that the petition be advertised only once in two local newspapers.

Second, it would appear from the above passage quoted that the learned judge has interpreted the words:

A ... *twice* at least in two local newspapers ... (Emphasis added.)

in r 24, to mean (to quote the judgment):

... *once* in two local newspapers .... (Emphasis added.)

It will be observed that the learned judge, apart from citing the judgment of
B VC George J (as he then was) in the High Court case of *Re NKM Holdings,* did not explain how he came to interpret the word 'twice' to mean 'once'. Indeed, as I have pointed out, there was no analysis of the rule at all in the judgment. With the greatest respect, I must disagree with the interpretation of the learned judge on r 24 for reasons already explained above.

C But it is pertinent to ask whether in the first place the decision in *Re NKM Holdings* supports the learned judge's interpretation of r 24 to the effect that the requirement as regards advertising in the newspapers would be satisfied if the petition is advertised only once in two local newspapers? With respect, it does not. *Re NKM Holdings* did not decide the issue concerning the advertising of the petition in the newspapers. The issue
D before VC George J in *Re NKM Holdings* merely concerned the advertisement of the petition in the Gazette.

Mr Alex Chang further argues that, even if there has been non-compliance with r 24 as regards the number of times the advertisements should appear in the newspapers, the respondent is now estopped from
E raising the issue of non-compliance as the registrar has already issued a certificate pursuant to r 32 of the Winding-up Rules.

In my judgment, the registrar can only issue the certificate if the petitioner has satisfied him that they have duly complied with all the requirements of the law pertaining to the winding up proceedings, including the requirement as to advertisements as required by r 24. Rule 32(1)(a)
F states:

> After a petition has been presented, the petitioner or his solicitor shall on a day to be appointed by the Registrar attend before the Registrar and satisfy him that:
>
> (a) the petition has been duly gazetted and advertised;

G In the present case, the learned registrar, with respect, has mistakenly issued a certificate pursuant to r 32 notwithstanding the fact that there has been a serious non-compliance with r 24. Looking at the matter objectively, the petitioner has failed to satisfy the registrar that there has been due compliance with regard to advertisements as required by r 32(1)(a) of the
H Winding-up Rules. In my opinion, it is within the powers of this court to set aside the certificate if the registrar has erroneously issued it; and I do intend to set it aside. The question of estoppel does not arise at all here. I must add that regardless of the fact that a certificate has been issued by the registrar, I am of the opinion that where the petitioner has failed to satisfy the registrar that there has been due compliance with r 24 (and with the other
I requirements as prescribed by the Winding-up Rules), I have no power to proceed with the petition. Under the law, the court, under the circumstances, has only two options: either to dismiss the petition or to

adjourn the hearing of the petition. This is clearly provided by r 32(2) which reads as follows:

> No order save an order for the dismissal or adjournment of the petition shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed and satisfied him in the manner required by this rule.

In my judgment, while it is not disputed that the petitioner in the present case had 'attended before the registrar', and a certificate of due compliance has been issued by the registrar, yet, clearly, the petitioner cannot be said to have 'satisfied him in the manner required by this rule'. In my view, whether or not the petitioner has so satisfied the registrar, such an issue must be looked at objectively and not subjectively.

Mr Alex Chang for the petitioner submits that, in the event the court is not with him on all his submissions above, the petition should not be dismissed but that the petitioner be given the opportunity to re-advertise the petition in the manner that this court rules to be proper.

Mr Chia, in reply, submits that in the event the court, despite the petitioner's non-compliance with r 24, is not minded to dismiss the petition but is inclined to give the petitioner the opportunity to re-advertise the petition, then, he applies that the respondent be given the opportunity to re-file its affidavit in opposition.

In the present case, although I have ruled that there has been non-compliance with r 24 on the part of the petitioner since the petition was advertised only once in each of the newspapers instead of twice, nevertheless, I think it would not be fair to dismiss the petition. It would be harsh and unjust to do so. I accept that the non-compliance was unintentional, caused by a mistaken view of the law and hence excusable. Moreover, the registrar had issued a certificate under r 32. I believe many legal practitioners and even registrars (and this explains why in the present case the registrar of this court issued the certificate pursuant to r 32), in dealing with winding up proceedings, have been guided by the decision of Abu Mansor J in *Teck Yow Brothers*. They must be forgiven if they have taken the mistaken view that *Teck Yow Brothers* is an authority for the proposition that, as regards advertising the petition in the newspapers, the petition needs to be advertised only once in two local newspapers. In my judgment, justice requires that the petitioner be allowed to re-advertise the petition and the respondent be allowed to re-file its affidavit in opposition.

Accordingly, the petition is adjourned and is to be heard afresh on 17 March 2003. The registrar's certificate is set aside. The petitioner is to take the necessary steps to re-advertise the petition in the Gazette and in the newspapers in accordance with r 24, and in accordance with the interpretation of that rule as determined by this court in this judgment. Thereafter, the petitioner is to apply to the registrar for an appointment for the purpose of obtaining the registrar's certificate. The respondent is to re-file its affidavit in opposition on or before 31 January 2003 and the petitioner is to file and serve its affidavit in reply (if any) on or before 14 February 2003.

A Petition adjourned and to be heard afresh on 17 March 2003. Petition to be re-advertised in the Gazette and local newspapers.

Petition adjourned to be heard afresh on 17 March 2003 and petitioner allowed to re-advertise petition in the Gazette and local newspapers.

B [*Editorial Note*: See *Pembinaan Sri Tiram (M) Sdn Bhd v Othla Sdn Bhd* Companies (Winding-Up) No D3–42–54 of 1987 where VC George J (as he then was) ordered that upon the true construction of r 24 of the Companies (Winding-Up) Rules 1972, the petitioner has complied with the said rule by advertising once in the Gazette and once each at least in two different local newspapers.]

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Reported by Peter Ling

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